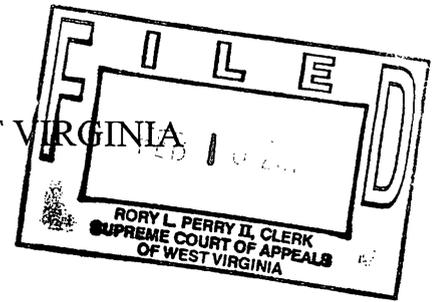


BRIEF FILED
WITH MOTION
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



Gregory Grim, *et al.* ,
Petitioners,

v.

Docket No. 13-1133

Eastern Electric, LLC.,
Respondents.

Amicus Curiae Brief

by the West Virginia State Building and Construction Trades Council, AFL-CIO and its
division, the Affiliated Construction Trades Foundation

Supporting the Petitioner and the Reversal of the Circuit Court

Presented by:

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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

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Gary Rhodes, Brian Moore, and Jamie Gray,

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Respondent.

***Amicus Curiae* Brief by the West Virginia State Building and Construction
Trades Council, AFL-CIO and its division, the Affiliated Construction Trades
Foundation**

Now comes the West Virginia State Building and Construction Trades Council, AFL-CIO and its division, the Affiliated Construction Trades Foundation, (hereinafter collectively referred to as the “Building Trades/ACT”) by counsel¹, and pursuant to Rule 30 of the Rules of Appellate Procedure provisionally files this Amicus Curiae Brief in this matter, and in support thereof states the following:

Statement on Identity of Amicus Curiae

The Building Trades/ACT is an entity that represents approximately 20,000 construction workers in West Virginia and surrounding states. The Building Trades/ACT

¹ In accordance with Rule 30(5) of the West Virginia Rules of Appellate Procedure, counsel states that I am both counsel for the Petitioners in this matter and counsel for the Building Trades/ACT. Counsel further states that I authored this Brief in whole and co-authored the Petitioners’ Initial Brief. Counsel states that the Petitioners did not make a contribution intended to fund the preparation or submission of this Brief.

is an entity that has monitored the awarding of public contracts and compliance with the law regarding the payment of prevailing wage throughout West Virginia at all levels of government. In addition, the Building Trades/ACT works to protect the interest of its members in part by ensuring public construction in West Virginia complies with that the laws of West Virginia. As this Court is aware, the Affiliated Construction Trades has a long history of participation in civil actions regarding the prevailing wage (including: *Affiliated Construction Trades Foundation v. University of West Virginia Board of Trustees*, 557 S.E.2d 863, 210 W.Va. 456 (2001); *State ex rel Tucker County Solid Waste Authority v. West Virginia Division of Labor*, 668 S.E.2d 216, 222 W.Va. 588 (2008); *Affiliated Constr. Trades Found. v. W. Va. DOT* 227 W. Va. 653: 713 S.E.2d 809 (2011) and *Affiliated Constr. Trades Found. v. Stucky*, 229 W. Va. 408; 729 S.E.2d 243 (2012))

Argument

The Building Trades/ACT has reviewed the Initial Brief of the Petitioners in this manner and concurs with the Memorandum in all respects. The Building Trades/ACT therefore will not repeat those arguments herein. The Building Trades/ACT however would note the truly absurd nature and damaging impact of the Circuit Court's decision in this matter.

The broad nature and negative impact of the Circuit Court's decision in this matter is hard to understate for working men and women in West Virginia. The Circuit Court's decision is that workers who performed construction work on the Capital of West Virginia and the Governor's mansion have no avenue to bring their civil action to the Courts of West Virginia. That is if the Circuit Court's Order is upheld these construction

workers cannot bring civil action under the Prevailing Wage or the Wage Payment and Collection Act – despite the clear statutory private rights of actions.

The troubling holdings of the Circuit Court include its findings that: the Respondent made a mistake regarding the application of the prevailing wage; the statute of limitations for prevailing wage is two years; the Wage Payment and Collection Act does not apply, and the recovery by the Petitioners of lost wages from the Respondents would lead to an absurd and unfair result. The Circuit Court made these rulings despite the fact that: there is no evidence in the record that to support the idea of a good faith mistake and the record is clear that the Respondent paid these same workers doing the same work the prevailing wage on other public projects; that the statute of limitations is three years for the prevailing wage and five years for the Wage Payment and Collection Act; that the Circuit Court cites no West Virginia law for its holdings that the Wage Payment Act does not apply or that the Prevailing Wage Act is the exclusive remedy for the Petitioners; or that the absurd and unfair result would be that the Petitioners are denied the payment of wages that is set by statute.

If the Circuit Court's decision in this matter is upheld and construction workers who performed construction work on a public project on the Capital Building of West Virginia and the Governor's Mansion are barred from bringing their case to this State's Court based on the reasons set out by the Circuit Court then the statutes of this State regarding working men and women will be rendered moot.

As this Court is aware, it has long held that Although the Circuit Court noted that the Wage Payment and Collection Act is, "remedial legislation designed to protect

working people and to assist them in collection of compensation wrongly withheld” (citing *Mullins v. Venable*, 171 W.Va. 92, 94, 297 S.E.2d 866, 869 (1982)),

This Court has also long held that the public policy underlying the Prevailing Wage Act was set forth by the Legislature in in West Virginia Code § 21-5A-2:

It is hereby declared to be the policy of the State of West Virginia that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in this State in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements.

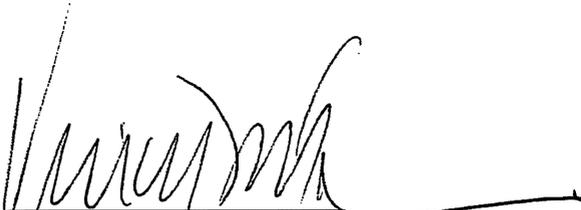
Affiliated Constr. Trades Found. v. W. Va. DOT, 227 W. Va. 653, 662-63; 713 S.E.2d 809, 818-19 (2011). This Court has observed that this provision demonstrates the Legislature’s “intention that prevailing wages be paid in public improvement construction projects.” *Id.* See also *Affiliated Constr. Trades Found. v. The University of West Virginia Board of Trustees*, 557 S.E.2d 863, 873 (2001) (“Section two of our wage act announces the unmistakable policy of this State to secure the payment of the prevailing wage for construction performed on public improvements ‘by or on behalf of any public authority.’”).

It simply is not possible to reconcile the decision of the Circuit Court in this matter with the law of this State as set out by this Court.

WHEREFORE, the Building Trades/ACT requests this Court issue an order reversing the Circuit Court’s holdings, answer the Certified Questions in the positive and return the matter to the Circuit Court so that the employees whose rights have been violated can finally have justice.

Respectfully submitted this 7th day of February, 2014.

West Virginia State Building and
Construction Trades Council, AFL-CIO,
and its division, the Affiliated Construction
Trades Foundation,
By Counsel

A handwritten signature in black ink, appearing to read 'Vincent Trivelli', with a long horizontal line extending to the right from the end of the signature.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on February 10, 2014 a true and correct copy of the **Motion by the West Virginia State Building and Construction Trades Council, AFL-CIO and its division, the Affiliated Construction Trades Foundation for Leave of the Court to file an *Amicus Curiae* Brief** with attached *Amicus Curiae* Brief by the West Virginia State Building and Construction Trades Council, AFL-CIO and its division, the Affiliated Construction Trades Foundation were served upon the following via hand delivery to the following attorney and address:

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